

Remarks

The Office Action mailed June 5, 2006 has been carefully reviewed and the following remarks have been made as a consequence thereof.

Claims 1-20 are now pending in this application. Claim 11 is allowed. Claims 1-4, 7, 12, 14, and 17 are rejected. Claims 5, 6, 8-10, 13, 15, 16, and 18-20 are objected to.

The rejection of Claims 1-4, 12, and 14 under 35 U.S.C. § 103(a) as being unpatentable over Shenzhen Fiberscape Technology article (Ethernet switch Model No. OP-S6026G available at http://optoscape.en.alibaba.com/product/50106982/50483103/Ethernet_Switches/Ethernet_S...) in view of Dolemo article ("EM 6208 Series Industrial Ethernet Switches, Hardware Installation Guide, Industrial Ethernet Switch Ethernet Guide (2001)) is respectfully traversed.

Applicants respectfully submit that the Dolemo article has not been shown to be prior art under 35 U.S.C. § 103(a) because the Office Action does not establish that the Dolemo article is prior art under 35 U.S.C. § 102. A 35 U.S.C. 103 rejection is based on a 102(a), 102(b), 102(e) etc. depending on the type of prior art reference used and its publication or issue date (MPEP § 2141.01). Before answering Graham's "content" inquiry, it must be known whether a patent or publication is in the prior art under 35 U.S.C. 102. (MPEP § 2144.08). Accordingly, Applicants respectfully submit that before using the Dolemo article as a prior art reference under 35 U.S.C. § 103(a), the Dolemo article must be prior art under 35 U.S.C. § 102.

The Office Action does not establish that the Dolemo article is prior art under 35 U.S.C. § 102 because the Examiner has not determined a publication date of the Dolemo article. In order to determine which section of 35 U.S.C. 102 applies, an effective filing date of the application must be determined and compared with a date of the reference (MPEP § 706.02(a)). The Examiner must determine an issue or publication date of a reference so that a proper comparison between the application and reference dates can be made (MPEP § 706.02(a)). If a publication does not include a publication date or retrieval date, it cannot be relied upon as prior art under

35 U.S.C. 102(a) or (b), although it may be relied upon to provide evidence regarding the state of the art (MPEP § 2128). Applicants respectfully submit that the Examiner has not provided the publication date of the Dolemo article. The Office Action provides a year 2001 of publication of the Dolemo article, and the year does not provide a date, including a month and day, of publication of the Dolemo article. Accordingly, Applicants respectfully submit that the Office Action does not establish the publication date of the Dolemo article. Hence, without establishing the publication date of the Dolemo article, the Office Action does not establish that the Dolemo article is prior art under 35 U.S.C. § 102 and without establishing that the Dolemo article is prior art under 35 U.S.C. § 102, the Office Action does not establish that the Dolemo article is prior art under 35 U.S.C. § 103. Thus, it has not been shown that the Dolemo article is prior art under 35 U.S.C. § 103.

Applicants respectfully submit the Shenzhen Fiberscape Technology article is not prior art under 35 U.S.C. § 103(a) because the Shenzhen Fiberscape Technology article is not prior art under 35 U.S.C. § 102. A 35 U.S.C. 103 rejection is based on a 102(a), 102(b), 102(e) etc. depending on the type of prior art reference used and its publication or issue date (MPEP § 2141.01). Before answering Graham's 'content' inquiry, it must be known whether a patent or publication is in the prior art under 35 U.S.C. 102. (MPEP § 2144.08). Accordingly, Applicants respectfully submit that before using the Shenzhen Fiberscape Technology article as a prior art reference under 35 U.S.C. § 103(a), the Shenzhen Fiberscape Technology article must be prior art under 35 U.S.C. § 102.

Applicants respectfully submit that the Shenzhen Fiberscape Technology article is not prior art under 102 because the Shenzhen Fiberscape Technology article is not prior art under § 102(a), § 102(b), or § 102(e).

Applicants respectfully submit that the Shenzhen Fiberscape Technology article is not prior art under 35 U.S.C. § 102(a) because the Shenzhen Fiberscape Technology article does not have a publication date earlier in time than the effective filing date, October 29, 2001, of the above-referenced application. For 35 U.S.C. § 102(a) to apply, the reference must have a publication date earlier in time than an effective filing date of the application (MPEP § 706.02(a)).

Applicants respectfully submit that a range of years from 1999 to 2006 is not the publication date of a description of an OP-S6026G Ethernet switch in the Shenzhen Fiberscape Technology article because the description of the OP-S6026G Ethernet switch has a post date or a publication date of May 26, 2006. Prior art disclosures on the Internet or on an on-line database are considered to be publicly available as of the date the item was publicly posted (MPEP § 2128). The Shenzhen Fiberscape Technology article recites the post date of May 26, 2006 as posting the description of the OP-S6026G Ethernet switch. Accordingly, the publication date of the Shenzhen Fiberscape Technology article appears to be May 26, 2006.

The publication date of May 26, 2006 is not earlier in time than the effective filing date, October 29, 2001, of the above-referenced patent application. Accordingly, Applicants respectfully submit that the Shenzhen Fiberscape Technology article is not prior art under 35 U.S.C. § 102(a).

Moreover, the Shenzhen Fiberscape Technology article was not published more than one year prior to the date, October 29, 2001, of the above-referenced application for patent in the United States. "Publications...must occur more than one year prior to the date of application for patent in the United States to bar a patent under 35 U.S.C. 102(b)" (MPEP § 2133). The Shenzhen Fiberscape Technology article was published on May 26, 2006, which is not more than one year prior to the date, October 29, 2001, of application in the United States of the above-referenced patent application. Accordingly, Applicants respectfully submit that the Shenzhen Fiberscape Technology article is not prior art under 35 U.S.C. § 102(b).

Applicants respectfully submit that the Shenzhen Fiberscape Technology article is not prior art under 35 U.S.C. § 102(e) because the Shenzhen Fiberscape Technology article is not a U.S. patent, a U.S. application publication, or a WIPO publication of an international application under PCT Article 21(2). The potential reference must be a U.S. patent, a U.S. application publication or a WIPO publication of an international application under PCT Article 21(2) in order to apply the reference under 35 U.S.C. § 102(e) (MPEP § 706.02(f)(1)). Applicants respectfully submit that the Shenzhen Fiberscape Technology article is not a U.S. patent, a U.S. application publication, or a WIPO publication of an international application under PCT Article

21(2). Accordingly, Applicants respectfully submit that the Shenzhen Fiberscape Technology article is not prior art under 35 U.S.C. § 102(e). Hence, the Shenzhen Fiberscape Technology article is not prior art under 35 U.S.C. § 102 and is therefore not prior art under 35 U.S.C. § 103(a).

For at least the reasons set forth above, Applicants respectfully request that the Section 103 rejection of Claims 1-4, 12, and 14 be withdrawn.

The rejection of Claims 7 and 17 under 35 U.S.C. § 103(a) as being unpatentable over the Shenzhen Fiberscape Technology article in view of the Dolemo article, and further in view of Compaq (*Quickspecs Compaq SW5425 Desktop Gigabit Ethernet Switch*, at http://h18002.www1.hp.com/products/quickspecs/10090_div/10090_div.HTML) is respectfully traversed.

As explained above, the Shenzhen Fiberscape Technology article and the Dolemo article are not prior art under 35 U.S.C. § 103(a).

Compaq describes a Compaq SW5425 Desktop Gigabit Ethernet Switch (page 1). Compaq SW5425 Desktop Gigabit Ethernet Switch operates in an operating environment having a temperature range of 0 to 40 °C.

Claim 7 depends from independent Claim 1 which recites an Ethernet switch for use in a non-office environment, the Ethernet switch comprising “a plurality of ports, said switch configured to be operable within a temperature range of at least between approximately 0° C and approximately 60° C, said switch further configured to be operable within a non-condensing humidity range of at least between approximately 10% and approximately 95%, said switch further configured to support at least one of a Virtual Local Area Network (VLAN), a Quality of Service (QoS), a Remote Monitoring (RMON), and a Spanning Tree, wherein said switch configures the VLAN by operating within the temperature range, and wherein said switch is further configured to transfer data between a plurality of devices.”

Compaq does not describe or suggest an Ethernet switch as recited in Claim 1. Specifically, Compaq does not describe or suggest the switch configured to be

operable within a temperature range of at least between approximately 0° C and approximately 60° C, the switch that configures the VLAN by operating within the temperature range. Rather, Compaq describes a Compaq SW5425 Desktop Gigabit Ethernet Switch that operates in an operating environment having a temperature range of 0 to 40 °C. Accordingly, Compaq does not describe or suggest the switch that configures the VLAN by operating within the temperature range of at least between approximately 0° C and approximately 60° C. For the reasons set forth above, Claim 1 is submitted to be patentable over Compaq.

When the recitations of Claim 7 are considered in combination with the recitations of Claim 1, Applicants submit that dependent Claim 7 likewise is patentable over Compaq.

Claim 17 depends from independent Claim 12 which recites an Ethernet network including “a first switch configured to be used in a non-office environment; and a plurality of user devices operationally coupled to said first switch such that said first switch transfers data from at least one of said devices to a different one of said devices, said first switch configured to: be operable within a temperature range of at least between approximately 0° C and approximately 60°C; be operable within a non-condensing humidity range of at least between approximately 10% and approximately 95%; and support at least one of a Virtual Local Area Network (VLAN), a Quality of Service (QoS), a Remote Monitoring (RMON), and a Spanning Tree, wherein said first switch configures the VLAN by operating within the temperature range.”

Compaq does not describe or suggest an Ethernet network as recited in Claim 12. Specifically, Compaq does not describe or suggest a first switch configured to be used in a non-office environment, the first switch configured to be operable within a temperature range of at least between approximately 0° C and approximately 60°C, the first switch configures the VLAN by operating within the temperature range. Rather, Compaq describes a Compaq SW5425 Desktop Gigabit Ethernet Switch that operates in an operating environment having a temperature range of 0 to 40 °C. Accordingly, Compaq does not describe or suggest the first switch configures the VLAN by operating within the temperature range of at least between approximately

0° C and approximately 60°C. For the reasons set forth above, Claim 12 is submitted to be patentable over Compaq.

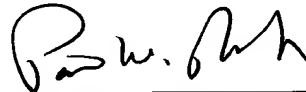
When the recitations of Claim 17 are considered in combination with the recitations of Claim 12, Applicants submit that dependent Claim 17 likewise is patentable over Compaq.

For at least the reasons set forth above, Applicants respectfully request that the Section 103 rejection of Claims 7 and 17 be withdrawn.

Claim 11 is allowed. Claims 5, 6, 8-10, 13, 15, 16, and 18-20 have been indicated to contain allowable subject matter if rewritten to include all of the limitations of the respective base claims and any respective intervening claims. Applicants thank the Examiner for the indication of allowable subject matter in Claims 5, 6, 8-10, 13, 15, 16, and 18-20.

In view of the foregoing amendment and remarks, all the claims now active in this application are believed to be in condition for allowance. Reconsideration and favorable action is respectfully solicited.

Respectfully Submitted,



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